

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ERIC FULTON,)
)
 Petitioner-)
 Appellant,)
) Ct. App. No. 09-1483
 v.) E.D.Mo. No. 4:06 CV 1857 DDN
)
 JAMES PURKETT,)
)
 Respondent-)
 Appellee.)

MEMORANDUM TO COURT OF APPEALS

On March 11, 2009, the United States Court of Appeals for the Eighth Circuit remanded this case with an order that this court "determine whether [appellant Eric] Fulton's untimely notice of appeal was due to excusable neglect or good cause; and, if so, whether the time for filing the notice of appeal should be extended." (Doc. 27.) On March 12, 2009, this court ordered petitioner to explain, in writing, his reason for failing to file his notice of appeal on time. (Doc. 28.)

On March 23, 2009, petitioner Fulton responded to the court order. (Doc. 29.) In his response, Fulton stated that he did not receive this court's Memorandum and Judgment Order, issued on December 11, 2008, until February 18, 2009. In support of his declaration, Fulton's response bears a signed handwritten statement from Stanley Pruett, a caseworker assigned to Fulton's correctional facility. Pruett states that Fulton "did not receive any legal mail for the month of Dec. 2008. A log is kept by my office." (Id. at 2.) Fulton states that he learned about the court's decision on February 18, 2009, when he received a response to a letter he had written on February 9, 2009. (Id.)

On April 7, 2009, respondent replied. (Doc. 30.) Respondent argues that Fulton should have received prompt notice of the court's order because he had not been transferred or segregated during the period at issue. However, respondent accepts the statement of Stanley Pruett. "Thus, the location of the mail that this Court sent to Fulton on December 11, 2008, remains unknown." (Id. at 2.)

Upon the record before it, this court finds that petitioner Eric Fulton did not receive any legal mail during the month of December 2008, including the Memorandum and the Judgment Order issued in this case on December 11, 2008. Therefore, in response to the order of the Court of Appeals,

This court finds and concludes that petitioner-appellant Eric Fulton's failure to file a timely notice of appeal was due to good cause, namely, he did not receive timely notice of this court's final decision which was issued on December 11, 2008.

Further, this court finds and concludes that the time to file a notice of appeal from the decision of this court, issued on December 11, 2008, should be extended for good cause under the Federal Rules of Appellate Procedure, subject to this court's prior determination that a certificate of appealability should not be issued.

The Clerk of this Court shall forthwith forward this Memorandum to the Clerk of the Court of Appeals.

/S/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on April 14, 2009.